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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DARREN "PETE" WHITE,

Plaintiff,

v.

CITY OF LOS ANGELES, ET AL.,

Defendants.

Case No.: 2:17-cv-3306-SJO-MRW

**JOINT PROPOSED JURY
INSTRUCTIONS**

Date: August 21, 2018

Time: 9:00 a.m.

Dept.: 10C (Hon. S. James Otero)

Complaint filed: May 3, 2017

1 **TO THE COURT AND ALL INTERESTED PARTIES:**

2
3 Plaintiffs respectfully submit the following joint proposed instructions.
4 Plaintiff and Defendants met and conferred about these instructions on August 3,
5 2018. Defendants verbally agreed to all the instructions herein, with the possible
6 exception of Instruction 1.5. Defendants sent modifications to Instruction 1.5 which
7 Plaintiffs have incorporated along with a modification of their own. Defendants
8 were not available to review and finalize the instructions on August 6, 2018, due to
9 their counsel being ill. For that reason, Plaintiff files this version of the Joint
10 Instructions without Defendants' signature. Defendants will advise the court if
11 amendments are necessary.

12
13 Dated: August 6, 2018

14 Respectfully submitted,

15 LAW OFFICE OF CAROL A. SOBEL
16 SCHONBRUN SEPLOW HARRIS & HOFFMAN LLP

17 By: /s/ Catherine E. Sweetser

18 Carol A. Sobel

19 Catherine E. Sweetser

20 Monique Alarcon

21 *Attorneys for Plaintiff,*

22 *DARREN "PETE" WHITE.*

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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.2**

4 **DUTY OF JURY**

5
6 Members of the Jury: You are now the jury in this case. It is my duty to
7 instruct you on the law.

8 These instructions are preliminary instructions to help you understand the
9 principles that apply to civil trials and to help you understand the evidence as you
10 listen to it. You will be allowed to keep this set of instructions to refer to
11 throughout the trial. These instructions are not to be taken home and must remain in
12 the jury room when you leave in the evenings. At the end of the trial, these
13 instructions will be collected and I will give you a final set of instructions. It is the
14 final set of instructions that will govern your deliberations.

15 It is your duty to find the facts from all the evidence in the case. To those
16 facts you will apply the law as I give it to you. You must follow the law as I give it
17 to you whether you agree with it or not. And you must not be influenced by any
18 personal likes or dislikes, opinions, prejudices, or sympathy. That means that you
19 must decide the case solely on the evidence before you. You will recall that you
20 took an oath to do so.

21 Please do not read into these instructions or anything I may say or do that I
22 have an opinion regarding the evidence or what your verdict should be.

23 In following my instructions, you must follow all of them and not single out
24 some and ignore others; they are all important.

25
26
27 Authority: Unmodified Model Instruction 1.2

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION**

4 **1.3 DUTY OF JURY**

5
6 Members of the Jury: Now that you have heard all of the evidence it is my
7 duty to instruct you as to the law of the case.

8 It is your duty to find the facts from all the evidence in the case. To those
9 facts you will apply the law as I give it to you. You must follow the law as I give it
10 to you whether you agree with it or not. And you must not be influenced by any
11 personal likes or dislikes, opinions, prejudices, or sympathy. That means that you
12 must decide the case solely on the evidence before you. You will recall that you
13 took an oath to do so.

14 Please do not read into these instructions, or anything I may say or do, that I
15 have an opinion regarding the evidence or what your verdict should be.

16 In following my instructions, you must follow all of them and not single out
17 some and ignore others; they are all important.

18
19
20 Authority: Unmodified Model Instruction 1.3

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.5**
4 **CLAIMS AND DEFENSES**

5
6 To help you follow the evidence, I will give you a brief summary of the
7 positions of the parties:

8 The plaintiff, DARREN WHITE, claims he was subjected to violations of his
9 Constitutional rights by Defendant EDWARD KINNEY when he arrested him
10 without probable cause in order to chill his First Amendment rights and in
11 retaliation for his exercise of his First Amendment rights, and when he held him
12 longer than necessary to cite or book him. Plaintiff contends that he was treated
13 differently than others present that day based on the exercise of his First
14 Amendment rights. The plaintiff has the burden of proving these claims.

15 These rights will be defined in later instructions.

16 The defendants deny these claims. Defendants contend that Pete White was
17 lawfully arrested and they contend that Pete White repeatedly ignored Police
18 instructions. Defendants also contend that Pete White's arrest had nothing to do
19 with the First Amendment.

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21
22 Authority: Modified Model Instruction 1.5 to create a short statement of claims.
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.6**
4 **BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE**
5

6 When a party has the burden of proof on any claim or affirmative defense by
7 a preponderance of the evidence, it means you must be persuaded by the evidence
8 that the claim or affirmative defense is more probably true than not true.

9 You should base your decision on all of the evidence, regardless of which
10 party presented it.
11

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13 Authority: Unmodified Model Instruction 1.6
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1 COURT'S INSTRUCTION NUMBER ____

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3 **NINTH CIRCUIT MODEL INSTRUCTION 1.9**

4 **WHAT IS EVIDENCE**

5
6 The evidence you are to consider in deciding what the facts are consists of:

- 7
- 8 1. the sworn testimony of any witness;
 - 9
 - 10 2. the exhibits which are received into evidence;
 - 11
 - 12 3. any facts to which the lawyers have agreed; and
 - 13
 - 14 4. any facts that I may instruct you to accept as proved.
 - 15

16
17 Authority: Unmodified Model Instruction 1.9

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.10**

4 **WHAT IS NOT EVIDENCE**

5
6 In reaching your verdict, you may consider only the testimony and exhibits
7 received into evidence. Certain things are not evidence, and you may not consider
8 them in deciding what the facts are. I will list them for you:

9 (1) Arguments and statements by lawyers are not evidence. The lawyers are
10 not witnesses. What they may say in their opening statements and in their closing
11 arguments, and at other times is intended to help you interpret the evidence, but it is
12 not evidence. If the facts as you remember them differ from the way the lawyers
13 have stated them, your memory of them controls.

14 (2) Questions and objections by lawyers are not evidence. Attorneys have a
15 duty to their clients to object when they believe a question is improper under the
16 rules of evidence. You should not be influenced by the objection or by the court's
17 ruling on it.

18 (3) Testimony that has been excluded or stricken, or that you are instructed to
19 disregard, is not evidence and must not be considered. In addition sometimes
20 testimony and exhibits are received only for a limited purpose; when I instruct you
21 to consider certain evidence only for a limited purpose, you must do so and you
22 may not consider that evidence for any other purpose.

23 (4) Anything you may have seen or heard when the court was not in session
24 is not evidence. You are to decide the case solely on the evidence received at the
25 trial.

26
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28 Authority: Unmodified Model Instruction 1.10

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.11**
4 **EVIDENCE FOR LIMITED PURPOSE**
5

6 Some evidence may be admitted for a limited purpose only.

7 When I instruct you that an item of evidence has been admitted for a limited
8 purpose, you must consider it only for that limited purpose and not for any other
9 purpose.
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12 Authority: Unmodified Model Instruction 1.11
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1 COURT'S INSTRUCTION NUMBER ____

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3 **NINTH CIRCUIT MODEL INSTRUCTION 1.12**
4 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**
5

6 Evidence may be direct or circumstantial. Direct evidence is direct proof of a
7 fact, such as testimony by a witness about what that witness personally saw or
8 heard or did. Circumstantial evidence is proof of one or more facts from which you
9 could find another fact.

10 You should consider both kinds of evidence. The law makes no distinction
11 between the weight to be given to either direct or circumstantial evidence. It is for
12 you to decide how much weight to give to any evidence.
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15 Authority: Unmodified Model Instruction 1.12
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.13**

4 **RULING ON OBJECTIONS**

5
6 There are rules of evidence that control what can be received into evidence.
7 When a lawyer asks a question or offers an exhibit into evidence and a lawyer on
8 the other side thinks that it is not permitted by the rules of evidence, that lawyer
9 may object. If I overrule the objection, the question may be answered or the exhibit
10 received. If I sustain the objection, the question cannot be answered, and the
11 exhibit cannot be received. Whenever I sustain an objection to a question, you
12 must ignore the question and must not guess what the answer might have been.

13 Sometimes I may order that evidence be stricken from the record and that
14 you disregard or ignore the evidence. That means that when you are deciding the
15 case, you must not consider the stricken evidence for any purpose.

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18 Authority: Unmodified Model Instruction 1.13
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.14**
4 **CREDIBILITY OF WITNESSES**

5
6 In deciding the facts in this case, you may have to decide which testimony to
7 believe and which testimony not to believe. You may believe everything a witness
8 says, or part of it, or none of it. Proof of a fact does not necessarily depend on the
9 number of witnesses who testify about it.

10 In considering the testimony of any witness, you may take into account:

- 11 (1) the opportunity and ability of the witness to see or hear or know the
12 things testified to;
13 (2) the witness's memory;
14 (3) the witness's manner while testifying;
15 (4) the witness's interest in the outcome of the case, if any;
16 (5) the witness's bias or prejudice, if any;
17 (6) whether other evidence contradicted the witness's testimony;
18 (7) the reasonableness of the witness's testimony in light of all the evidence;
19 and
20 (8) any other factors that bear on believability.

21
22 Sometimes a witness may say something that is not consistent with
23 something else he or she said. Sometimes different witnesses will give different
24 versions of what happened. People often forget things or make mistakes in what
25 they remember. Also, two people may see the same event but remember it
26 differently. You may consider these differences, but do not decide that testimony is
27 untrue just because it differs from other testimony.

28 //

1 However, if you decide that a witness has deliberately testified untruthfully
2 about something important, you may choose not to believe anything that witness
3 said. On the other hand, if you think the witness testified untruthfully about some
4 things but told the truth about others, you may accept the part you think is true and
5 ignore the rest.

6 The weight of the evidence as to a fact does not necessarily depend on the
7 number of witnesses who testify about it. What is important is how believable the
8 witnesses were, and how much weight you think their testimony deserves.

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11 Authority: Unmodified Model Instruction 1.14
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.15**

4 **CONDUCT OF THE JURY**

5
6 I will now say a few words about your conduct as jurors.

7 First, keep an open mind throughout the trial, and do not decide what the
8 verdict should be until you and your fellow jurors have completed your
9 deliberations at the end of the case.

10 Second, because you must decide this case based only on the evidence
11 received in the case and on my instructions as to the law that applies, you must not
12 be exposed to any other information about the case or to the issues it involves
13 during the course of your jury duty. Thus, until the end of the case or unless I tell
14 you otherwise:

15 Do not communicate with anyone in any way and do not let anyone else
16 communicate with you in any way about the merits of the case or anything to do
17 with it. This includes discussing the case in person, in writing, by phone or
18 electronic means, via e-mail, text messaging, or any Internet chat room, blog, Web
19 site or application, including but not limited to Facebook, YouTube, Twitter,
20 Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to
21 communicating with your fellow jurors until I give you the case for deliberation,
22 and it applies to communicating with everyone else including your family
23 members, your employer, the media or press, and the people involved in the trial,
24 although you may notify your family and your employer that you have been seated
25 as a juror in the case, and how long you expect the trial to last. But, if you are
26 asked or approached in any way about your jury service or anything about this case,
27 you must respond that you have been ordered not to discuss the matter and to report
28 the contact to the court.

1 Because you will receive all the evidence and legal instruction you properly
2 may consider to return a verdict: do not read, watch, or listen to any news or media
3 accounts or commentary about the case or anything to do with it; do not do any
4 research, such as consulting dictionaries, searching the Internet or using other
5 reference materials; and do not make any investigation or in any other way try to
6 learn about the case on your own. Do not visit or view any place discussed in this
7 case, and do not use Internet programs or other devices to search for or view any
8 place discussed during the trial. Also, do not do any research about this case, the
9 law, or the people involved—including the parties, the witnesses or the lawyers—
10 until you have been excused as jurors. If you happen to read or hear anything
11 touching on this case in the media, turn away and report it to me as soon as
12 possible.

13 These rules protect each party's right to have this case decided only on
14 evidence that has been presented here in court. Witnesses here in court take an oath
15 to tell the truth, and the accuracy of their testimony is tested through the trial
16 process. If you do any research or investigation outside the courtroom, or gain any
17 information through improper communications, then your verdict may be
18 influenced by inaccurate, incomplete or misleading information that has not been
19 tested by the trial process. Each of the parties is entitled to a fair trial by an
20 impartial jury, and if you decide the case based on information not presented in
21 court, you will have denied the parties a fair trial. Remember, you have taken an
22 oath to follow the rules, and it is very important that you follow these rules.

23 A juror who violates these restrictions jeopardizes the fairness of these
24 proceedings, and a mistrial could result that would require the entire trial process to
25 start over. If any juror is exposed to any outside information, please notify the
26 court immediately.

27
28 Authority: Unmodified Model Instruction 1.15

COURT'S INSTRUCTION NUMBER ____

NINTH CIRCUIT MODEL INSTRUCTION 1.16
PUBLICITY DURING TRIAL

If there is any news media account or commentary about the case or anything to do with it, you must ignore it. You must not read, watch or listen to any news media account or commentary about the case or anything to do with it. The case must be decided by you solely and exclusively on the evidence that will be received in the case and on my instructions as to the law that applies. If any juror is exposed to any outside information, please notify me immediately.

Authority: Unmodified Model Instruction 1.16

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.17**
4 **NO TRANSCRIPT AVAILABLE TO JURY**
5

6 I urge you to pay close attention to the testimony as it is given. During
7 deliberations, you will not have a transcript of the trial testimony.
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10 Authority: Unmodified Model Instruction 1.17
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COURT'S INSTRUCTION NUMBER ____

NINTH CIRCUIT MODEL INSTRUCTION 1.18
TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you go to the jury room to decide the case. Do not let notetaking distract you. When you leave, your notes should be left in the [courtroom] [jury room] [envelope in the jury room].

No one will read your notes. Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of other jurors.

Authority: Unmodified Model Instruction 1.18

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.20**
4 **BENCH CONFERENCES AND RECESSES**
5

6 From time to time during the trial, it may become necessary for me to talk
7 with the attorneys out of the hearing of the jury, either by having a conference at the
8 bench when the jury is present in the courtroom, or by calling a recess. Please
9 understand that while you are waiting, we are working. The purpose of these
10 conferences is not to keep relevant information from you, but to decide how certain
11 evidence is to be treated under the rules of evidence and to avoid confusion and
12 error.

13 Of course, we will do what we can to keep the number and length of these
14 conferences to a minimum. I may not always grant an attorney's request for a
15 conference. Do not consider my granting or denying a request for a conference as
16 any indication of my opinion of the case or of what your verdict should be.
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19 Authority: Unmodified Model Instruction 1.20
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 1.21**

4 **OUTLINE OF TRIAL**

5
6 Trials proceed in the following way: First, each side may make an opening
7 statement. An opening statement is not evidence. It is simply an outline to help
8 you understand what that party expects the evidence will show. A party is not
9 required to make an opening statement.

10 The plaintiff will then present evidence, and counsel for the defendant may
11 cross-examine. Then the defendant may present evidence, and counsel for the
12 plaintiff may cross-examine.

13 After the evidence has been presented, I will instruct you on the law that
14 applies to the case and the attorneys will make closing arguments.

15 After that, you will go to the jury room to deliberate on your verdict.
16
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18 Authority: Unmodified Model Instruction 1.21
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 2.2**
4 **STIPULATIONS OF FACT**
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6 The parties have agreed to certain facts that will be read to you. You must
7 therefore treat these facts as having been proved.
8

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10 Authority: Unmodified Model Instruction 2.2
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COURT'S INSTRUCTION NUMBER _____

NINTH CIRCUIT MODEL INSTRUCTION 2.14
CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries not admitted into evidence have been shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Authority: Unmodified Model Instruction 2.14

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 2.16**
4 **EVIDENCE IN ELECTRONIC FORMAT**
5

6 Those exhibits received in evidence that are capable of being displayed
7 electronically will be provided to you in that form, and you will be able to view
8 them in the jury room. A computer, projector, printer and accessory equipment will
9 be available to you in the jury room.

10 A court technician will show you how to operate the computer and other
11 equipment; how to locate and view the exhibits on the computer; and how to print
12 the exhibits. You will also be provided with a paper list of all exhibits received in
13 evidence. You may request a paper copy of any exhibit received in evidence by
14 sending a note through the clerk. If you need additional equipment or supplies or if
15 you have questions about how to operate the computer or other equipment, you may
16 send a note to the clerk, signed by your foreperson or by one or more members of
17 the jury. Do not refer to or discuss any exhibit you were attempting to view.

18 If a technical problem or question requires hands-on maintenance or
19 instruction, a court technician may enter the jury room with the clerk present for the
20 sole purpose of assuring that the only matter that is discussed is the technical
21 problem. When the court technician or any non-juror is in the jury room, the jury
22 shall not deliberate. No juror may say anything to the court technician or any non-
23 juror other than to describe the technical problem or to seek information about
24 operation of the equipment. Do not discuss any exhibit or any aspect of the case.

25 The sole purpose of providing the computer in the jury room is to enable
26 jurors to view the exhibits received in evidence in this case. You may not use the
27 computer for any other purpose. At my direction, technicians have taken steps to
28 ensure that the computer does not permit access to the Internet or to any "outside"

1 website, database, directory, game, or other material. Do not attempt to alter the
2 computer to obtain access to such materials. If you discover that the computer
3 provides or allows access to such materials, you must inform the court immediately
4 and refrain from viewing such materials. Do not remove the computer or any
5 electronic data [disk] from the jury room, and do not copy any such data.

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8 Authority: Unmodified Model Instruction 2.16
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 3.1**

4 **DUTY TO DELIBERATE**

5
6 Before you begin your deliberations, you should elect one member of the jury
7 as your presiding juror. That person will preside over the deliberations and speak for
8 you here in court.

9 You shall diligently strive to reach agreement with all of the other jurors if you
10 can do so. Your verdict must be unanimous.

11 Each of you must decide the case for yourself, but you should do so only after
12 you have considered all of the evidence, discussed it fully with the other jurors, and
13 listened to the views of your fellow jurors.

14 It is important that you attempt to reach a unanimous verdict but, of course,
15 only if each of you can do so after having made your own conscientious decision.
16 Do not be unwilling to change your opinion if the discussion persuades you that you
17 should. But do not come to a decision simply because other jurors think it is right,
18 or change an honest belief about the weight and effect of the evidence simply to reach
19 a verdict.

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22 Authority: Unmodified Model Instruction 3.1
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 3.2**
4 **CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY**

5
6 Because you must base your verdict only on the evidence received in the case
7 and on these instructions, I remind you that you must not be exposed to any other
8 information about the case or to the issues it involves. Except for discussing the
9 case with your fellow jurors during your deliberations:

10 Do not communicate with anyone in any way and do not let anyone else
11 communicate with you in any way about the merits of the case or anything to do
12 with it. This includes discussing the case in person, in writing, by phone or
13 electronic means, via email, via text messaging, or any Internet chat room, blog,
14 website or application, including but not limited to Facebook, YouTube, Twitter,
15 Instagram, LinkedIn, Snapchat, or any other forms of social media. . This applies
16 to communicating with your family members, your employer, the media or press,
17 and the people involved in the trial. If you are asked or approached in any way
18 about your jury service or anything about this case, you must respond that you have
19 been ordered not to discuss the matter and to report the contact to the court.

20 Do not read, watch, or listen to any news or media accounts or commentary
21 about the case or anything to do with it; do not do any research, such as consulting
22 dictionaries, searching the Internet or using other reference materials; and do not
23 make any investigation or in any other way try to learn about the case on your own.

24 These rules protect each party's right to have this case decided only on
25 evidence that has been presented here in court. Witnesses here in court take an oath
26 to tell the truth, and the accuracy of their testimony is tested through the trial
27 process. If you do any research or investigation outside the courtroom, or gain any
28 information through improper communications, then your verdict may be

1 influenced by inaccurate, incomplete or misleading information that has not been
2 tested by the trial process. Each of the parties is entitled to a fair trial by an
3 impartial jury, and if you decide the case based on information not presented in
4 court, you will have denied the parties a fair trial. Remember, you have taken an
5 oath to follow the rules, and it is very important that you follow these rules.

6 A juror who violates these restrictions jeopardizes the fairness of these
7 proceedings. If any juror is exposed to any outside information, please notify the
8 court immediately.

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11 Authority: Unmodified Model Instruction 3.2
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 3.3**
4 **COMMUNICATION WITH COURT**
5

6 If it becomes necessary during your deliberations to communicate with me,
7 you may send a note through the clerk, signed by your presiding juror or by one or
8 more members of the jury. No member of the jury should ever attempt to
9 communicate with me except by a signed writing; I will communicate with any
10 member of the jury on anything concerning the case only in writing, or here in open
11 court. If you send out a question, I will consult with the parties before answering it,
12 which may take some time. You may continue your deliberations while waiting for
13 the answer to any question. Remember that you are not to tell anyone—including
14 me—how the jury stands, numerically or otherwise, until after you have reached a
15 unanimous verdict or have been discharged. Do not disclose any vote count in any
16 note to the court.

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19 Authority: Unmodified Model Instruction 3.3
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1 COURT'S INSTRUCTION NUMBER ____

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3 **NINTH CIRCUIT MODEL INSTRUCTION 3.5**
4 **RETURN OF VERDICT**
5

6 A verdict form has been prepared for you. After you have reached
7 unanimous agreement on a verdict, your presiding juror will fill in the form that has
8 been given to you, sign and date it, and advise the clerk that you are ready to return
9 to the courtroom.
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12 Authority: Unmodified Model Instruction 3.5
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1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 5.1**

4 **DAMAGES—PROOF**

5
6 It is the duty of the Court to instruct you about the measure of damages. By
7 instructing you on damages, the Court does not mean to suggest for which party
8 your verdict should be rendered.

9 If you find for the Plaintiff DARREN WHITE on his constitutional claims,
10 you must determine his damages. DARREN WHITE has the burden of proving
11 damages by a preponderance of the evidence. Damages means the amount of
12 money that will reasonably and fairly compensate the plaintiff for any injury you
13 find was caused by the defendants. You should consider the following:

14 The nature and extent of injuries;

15 The loss of enjoyment of life experienced;

16 The mental, physical, or emotional pain and suffering experienced;

17 It is for you to determine what damages, if any, have been proved.

18 Your award must be based upon evidence and not upon speculation,
19 guesswork or conjecture.

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22 Authority: Ninth Circuit Model Instructions 5.1 and 5.2 (per the comments on the
23 instructions, the parties have merged the two instructions).

1 COURT'S INSTRUCTION NUMBER ____

2
3 **NINTH CIRCUIT MODEL INSTRUCTION 5.5**
4 **PUNITIVE DAMAGES (LIABILITY)**
5

6 Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the
7 purpose of injuring the plaintiff. Conduct is in reckless disregard of the plaintiff's
8 rights if, under the circumstances, it reflects complete indifference to the plaintiff's
9 safety or rights, or if the defendant acts in the face of a perceived risk that its
10 actions will violate the plaintiff's rights under federal law. An act or omission is
11 oppressive if the defendant injures or damages or otherwise violates the rights of
12 the plaintiff with unnecessary harshness or severity, such as by misusing or abusing
13 authority or power or by taking advantage of some weakness or disability or
14 misfortune of the plaintiff.
15

16
17 Authority: Ninth Circuit Model Instruction 5.5 (modified). This instruction has
18 been modified to include only the language on liability, as the parties have agreed
19 to bifurcate the punitive damages portion of the trial.
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1 COURT'S INSTRUCTION NUMBER ____

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3 **NINTH CIRCUIT MODEL INSTRUCTION 9.1**
4 **SECTION 1983 CLAIM—INTRODUCTORY INSTRUCTION**

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6 The plaintiff brings his claims under the federal statute, 42 U.S.C. § 1983,
7 which provides that any person or persons who, under color of state law, deprives
8 another of any rights, privileges, or immunities secured by the Constitution or laws
9 of the United States shall be liable to the injured party.

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12 Authority: Unmodified Model Instruction 9.1
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COURT’S INSTRUCTION NUMBER ____

NINTH CIRCUIT MODEL INSTRUCTION 9.3
SECTION 1983 CLAIM AGAINST DEFENDANT IN INDIVIDUAL
CAPACITY—ELEMENTS AND BURDEN OF PROOF

In order to prevail on his § 1983 claims against the defendant EDWARD KINNEY, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Defendant EDWARD KINNEY acted under color of law; and
2. the acts of Defendant EDWARD KINNEY deprived plaintiff DARREN WHITE of his constitutional rights.

A person acts “under color of state law” when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance or regulation. The parties have stipulated that the defendants acted under color of law.

If you find the plaintiff DARREN WHITE has proved each of these elements, and if you find that the plaintiff has proved all the elements he is required to prove under later instructions, your verdict should be for the plaintiff DARREN WHITE. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendants.

Authority: Unmodified Model Instruction 9.3